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RULES CLEARINGHOUSE

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CLEARINGHOUSE RULE 97-048

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

1. Statutory Authority

Section RL 31.03 (1) (g) makes reference to the costs incurred by the department for conducting record searches. The language is overbroad. See s. 440.26 (3), Stats. See also ss. RL 31.035 (1) (g) and 31.036 (1) (f).

2. Form, Style and Placement in Administrative Code

a. Section RL 30.02 (11) revises the definition of “permit” to include two types of permits. Has the department searched chs. RL 30 to 35 for use of the term “permit” to ensure that the revised definition is appropriate for all uses of the term?

b. SECTION 10 should create s. RL 31.001, rather than s. RL 31.055. In this regard, see also SECTIONS 34 and 43.

c. Section RL 31.034 restates, with modest revisions, current s. RL 33.01. It would be easier for the reader to determine what changes are made to current rules by renumbering and amending existing rules rather than repealing and recreating them. This comment applies to several provisions of the rule that essentially create or recreate existing rules.

d. The first sentence of s. RL 31.034 (1) should read: “A private detective agency shall obtain and maintain a surety bond or liability policy as required under s. 440.26 (4), Stats.” The statutory reference in the following sentence can then be deleted.

e. In s. RL 31.034 (2), “shall maintain” should be substituted for “shall be responsible for maintaining.”

f. Subsection (3) of s. RL 31.035 appears to apply only to the application procedure for private detective licenses. Is it intended that this reasonable accommodation provision have broader applicability?

g. It appears that s. RL 31.06 (2) should be placed elsewhere; for example, s. RL 31.01 (3).

h. Section RL 32.05 (1) appears to refer to a form. See s. 1.09 (2), Manual, for requirements regarding forms.

i. A more descriptive title to s. RL 32.06 (2) would be “PRIVATE SECURITY PERSONS.”

j. In s. RL 32.07 (2), it is suggested that the second sentence be deleted as unnecessary. If retained, the meaning of the reference to complying with s. RL 31.02 (1) should be clarified.

k. SECTIONS 32 and 33 can be combined into a repeal and recreation.

5. Clarity, Grammar, Punctuation and Use of Plain Language

a. There appears to be nothing in the rule requiring an applicant for a private security permit to provide evidence satisfactory to the department that the applicant is an employee of a private detective agency described in s. 440.26 (5) (c). See s. 440.26 (5m) (a) 3., Stats.

b. Section RL 31.03 (1) (b) and other provisions of the rule require the filing of fingerprints “. . . taken by a person who has provided evidence satisfactory to the department that the person is competent in taking fingerprints and trustworthy.” It is not clear how the person will demonstrate this to the department. Are persons who taken fingerprints certified by a public or private organization?

c. Section RL 31.03 (1) (c) should clarify to what “person’s” refers.

d. The rule does not address temporary private security permits under s. 440.26 (5r), Stats. Is that intended?

e. In the last sentence of s. RL 31.04 (4), should “dishonest act” replace “unauthorized assistance” for consistency with the previous two sentences?

f. Is the relationship of s. RL 31.04 (6) (b) 4. and sub. (7) clear?

g. The relationship of ss. RL 32.04 and 31.06 should be reviewed and clarified.

h. The last sentence of s. RL 32.05 (1) appears to be in need of clarification. Is the requirement intended only to apply when there is a transfer of employment? If there has been no transfer of employment, does the department have record of the private detective’s employer based on the license application information?

i. Section RL 35.01 (2) assumes that the department has authority to determine whether disciplinary action should be taken against a credential holder after conviction of a felony. Unpardoned felons are not eligible for credentials under s. 440.26, Stats.